ers of the letter of credit. A transfer of the letter of credit, as must be well known, involves a new contract between a bank and the intended transferee of the letter of credit. A separate letter of credit in favour of the transferee has to be issued. No contractual commitment on the part of the Defendants having been made, the Plaintiffs should have made their own contractual arrangements with their own bankers, usually the notifying bank, such as the Bank of Canton. An issuing bank of the letter of credit has no obligation whatsoever to enter into a new contract with an intended transferee. The Defendants as the issuing bank only had the obligation to pay against conforming documents which were never tendered.

The claim in negligence must also fail. In my view, it is beyond dispute that no duty of care had arisen in the purely commercial context in this case.

I therefore dismiss the Plaintiffs' claims with costs.

Claims dismissed.

Solicitors: *Godwin & Co.; Tan Rajah & Cheah.*

LIM CHENG WAH v NG YAW KIM

[O.C.J. (Thean J.) November 9, 1984]
[Singapore – Suit No. 1883 of 1981]

Damages – Interest – Court's discretion – Award of interest fully within the discretion of the court – Civil Law Act (Cap. 30), s. 9 – R.S.C. 1970, O. 42 r. 12 – Law Reform (Miscellaneous Provisions) Act, 1934, s. 3 (U.K.) – Administration of Justice Act 1969, s. 22 (U.K.).

In this case both the plaintiff and the defendant obtained compensation for loss and damage to their respective vehicles in an accident which occurred on May 9, 1978 and for which both were equally to blame. It was conceded by both parties that the defendant was to pay to the plaintiff damages in the sum of $13,505.38 and the plaintiff to pay to the defendant damages in the sum of $900.00. Counsel for the plaintiff applied under section 9 of the Civil Law Act for interest on the sum awarded.

The issue before the court was whether interest should be awarded on the said amounts respectively, and if so, at what rate and for what period should the interest be awarded.

Held: (1) the award of interest on the amount for which judgment is given is fully within the discretion of the court;

(2) since the plaintiff and the defendant had each been out of pocket in that they had actually paid the expenses incurred in repair of their respective motor vehicles they were entitled to interest on the judgment sum;

(3) interest should not be considered as further compensation or a part of the damage for loss or injury sustained; damages are not a matter of discretion for the court, whereas interest is;

(4) judgment should be given for the plaintiff on his claim in the sum of $13,505.38 with interest at 8% p.a. from June 9, 1981 to the date of judgment and judgment for the defendant on his counterclaim in the sum of $900.00 with interest at the same rate and for the same period.

Cases referred to:

(1) *Ban Pet Hock* v. *Ong Ah Ho* [1966] 2 M.L.J. 253.
(2) *Lai Chi Kay & Ors.* v. *Lee Kuo Shin* [1981] 2 M.L.J. 167.
(3) *Harbutt's Plasticine Ltd.* v. *Wayne Tank & Pump Co. Ltd.* [1970] 1 Q.B. 447.
(4) *Jefford* v. *Gee* [1970] 1 All E.R. 1202.
(5) *Pickett* v. *British Rail Engineering Ltd.* [1979] A.C. 136; [1978] 3 W.L.R. 955.

CIVIL SUIT.

Karuppan Chettiar for the plaintiff.
K. Jayabalan for the defendant.

Cur. Adv. Vult.

Thean J.: The claim and the counter-claim in this action arose out of an accident on May 9, 1978 in which a motor car, SE 3 R, driven by the Plaintiff collided with a taxi, SH 2383, driven by the Defendant at or near the junction of East Coast Road and Still Road. The Plaintiff claimed against the Defendant for loss and damage to the car caused by the negligence of the Defendant. The Defendant denied negligence and in turn counter-claimed for loss and damage to his taxi caused by the negligence of the Plaintiff.

When the action came on for trial the parties have agreed on the following issues, namely:

(a) that both Plaintiff and Defendant are equally to blame and that each party is liable to the other to the extent of 50% of the claim and counter-claim respectively.

(b) that on the basis of the said apportionment of liability the Defendant is to pay to the Plaintiff damages in the agreed sum of $13,505.38 and the Plaintiff to pay to the Defendant damages in the agreed sum of $900.

The only question for determination is whether interest should be awarded on the said amounts respectively, and if so, at what rate and for what period should the interest be awarded.

Mr. Karuppan for the Plaintiff relied on section 9 of the Civil Law Act (Cap. 30) and submitted that in this case the Plaintiff had incurred and paid the expenses of repairing the car, SE 3 R and should be compensated for having been kept out of the use of the money and that in these circumstances interest should be awarded. Mr. Jayabalan, on the other hand, contended that though section 9 of the Act gave the Court a discretion to award interest, that discretion should not be exercised. He relied on *Ban Pet Hock* v. *Ong Ah Ho*[1] in which Choor Singh, J. refused to allow any interest on the amount awarded for damages for personal injuries, and also on *Lai Chi Kay & Ors.* v. *Lee Kuo Shin*[2] in which Chua, J. expressed his agreement with Choor Singh, J. and disallowed interest on the damages for personal injuries.

Section 9 of the Civil Law Act (Cap. 30) clearly confers on the Court a discretion to award interest on the amount for which judgment is given and the said section is in the following terms:

"9 In any proceedings tried in any court of record for the recovery of any debt or damages, the court may, if it thinks fit, order that there shall be included in the sum for which judgment is given interest at such rate as it thinks fit on the whole or any part of the debt or damages for the whole or any part of the period between the date when the cause of action arose and the date of the judgment:

Provided that nothing in this section –

(a) shall authorize the giving of interest upon interest; or

(b) shall apply in relation to any debt upon which interest is payable as of right whether by virtue of any agreement or otherwise; or

(c) shall affect the damages recoverable for the dishonour of a bill of exchange."

In applying this section it is necessary to consider the basis on which interest should be awarded. This section is *in pari materia* with sub-section (1) of section 3 of the Law Reform (Miscellaneous Provisions) Act, 1934 of England and the basis on which the courts in England have acted in awarding interest under this sub-section is that the defendant has kept the plaintiff out of the money which ought to have been paid to him and since the defendant has had the use of the money he ought to compensate the plaintiff accordingly. In *Harbutt's "Plasticine" Ltd.* v. *Wayne Tank & Pump Co. Ltd.*[3] Lord Denning said, at p.468:

"An award of interest is discretionary. It seems to me that the basis of an award of interest is that the defendant has kept the plaintiff out of his money; and the defendant has had the use of it himself. So he ought to compensate the plaintiff accordingly."

That was a case of a claim for damages for a breach of contract and the Court of Appeal awarded interest on the amount of damages. The same principle was applied in *Jefford* v. *Gee*[4] which was a case of a claim for damages for personal injuries, and Lord Denning said, at p. 146:

"Interest should not be awarded as compensation for the damage done. It should only be awarded to a plaintiff for being kept out of money which ought to have been paid to him."

In the case of *Pickett* v. *British Rail Engineering Ltd.*[5] the House of Lords, *inter alia*, restored the amount of interest on general damages given by the trial judge, which was disallowed by the Court of Appeal on the ground that the general damages were awarded at an increased amount owing to inflation. Lord Wilberforce said, at p. 151:

"As to interest on damages, I would restore the decision of the judge. This was varied by the Court of Appeal on the theory that as damages are now normally subject to increase to take account of inflation, there is no occasion to award interest as well. I find this argument, with respect, fallacious. Increase for inflation is designed to preserve the "real" value of money: interest to compensate for being kept out of that "real" value. The one has no relation to the other. If the damages claimed remained, nominally, the same, because there was no inflation, interest would normally be given. The same should follow if the damages remain in real terms the same. Apart from the inflation argument no reason was suggested for interfering with the exercise of the judge's discretion."

Similar pronouncement was made by Lord Edmund-Davies at p. 164:

"My Lords, I have to say with great respect that the fallacy inherent in the passage quoted is in thinking that a plaintiff who, owing to inflation, gets a bigger award than he would have received had the case been disposed of earlier is better off in real terms. But in fact the bigger award is made simply to put the plaintiff in the same financial position as he would have been had the judgment followed immediately upon service of the writ. The reality is that the plaintiff in this case has been kept out of £7,000 until the date of judgment, and there is no reason why he should be deprived of the £787 interest awarded by the trial judge for the 15-month period between writ and judgment simply because a lesser sum than £7,000 might or would have been awarded had the case come on earlier. Furthermore, the suggestion

that the defendant is prejudiced overlooks the fact that he has meanwhile had the use of the money."

I am fully aware that section 3 of the Law Reform (Miscellaneous Provisions) Act, 1934 was amended by section 22 of the Administration of Justice Act, 1969, which came into effect on January 1, 1970. The effect of the amendment is that the court in England is obliged to award interest in all actions for personal injuries or fatal accidents unless it is satisfied that there are special reasons why no interest should be given. On this I have one observation. *Jefford* v. *Gee* (*supra*) was tried on June 16, 1969 and was governed "solely by the Act of 1934": see judgment of Lord Denning at p. 143. So was the case of *Harbutt's "Plasticine" Ltd.* v. *Wayne Tank & Pump Co. Ltd.* (*supra*). The principles as decided in those cases on the basis of which interest is awarded are clearly applicable in situations where the Act of 1969 has no application.

On the basis of the principles discussed above, I see no reason why in exercise of my discretion under section 9 of the Civil Law Act interest should not be awarded in this case. The Plaintiff and the Defendant had each been out of pocket; they had actually paid the expenses incurred in the repair of their respective motor vehicles and had been kept out of the money which ought to have been paid to them respectively. Interest should not be considered as further compensation or a part of the damages for loss or injury sustained; damages are not a matter of discretion for the Court, whereas interest is. As regards *Ban Pet Hock* v. *Ong Ah Ho (supra)* and *Lai Chi Kay & Ors.* v. *Lee Kuo Shin* (*supra*), they are cases of damages awarded for personal injuries and I refrain from expressing any view whether if the case before me were one of damages for personal injuries interest would similarly be awarded.

Mr. Jayabalan contended that the claim was one founded on tort and unless and until liability was established and the amount assessed, there was no liability on the part of the Defendant to pay and the Plaintiff could not say he had been deprived of the money. This argument, in my opinion, is unsound. In every case, whether it be one on contract or tort, where a judgment for payment of a certain sum is given against a defendant it is given on the basis that the defendant should have admitted the claim and paid the appropriate sum at the appropriate time, i.e. when it is due and payable. In the case of a claim for a liquidated sum under a contract, the precise amount is ascertained and once liability is established judgment will be given for that amount. In the case of a claim for damages – it may be one on tort or on contract – both the liability and the quantum will have to be determined and once determined, judgment will be given accordingly. In both cases if judgment is given, it is given on the basis that the plaintiff is entitled to the sum adjudged and should have been paid by the defendant. Section 9 of the Civil Law Act applies to "recovery of any debt or damages", and there is nothing in this section to suggest that recovery of damages in a tortious claim should be excluded. An award of interest on the amount for which judgment is given is a matter fully within the discretion of the Court. In a claim for damages on tort, if the defendant admits liability at the appropriate stage and assessment of the quantum is delayed owing to no fault of the defendant, the Court will no doubt take this into account in deciding whether or not to award interest.

With regard to the period for which the interest should be awarded, the Plaintiff was guilty of a long delay in commencing this action; it took him about 3 years to decide on commencing action, and I have discounted this period. As for the rate of interest, Mr. Karuppan suggested 8% per annum which would be consistent with Order 42 Rule 12 of the Supreme Court which provides that every judgment carries interest at 8% per annum. I think this rate is reasonable and have accepted his suggestion.

At the conclusion of the trial, I gave judgment for the Plaintiff on his claim in the sum of $13,505.38 with interest at 8% per annum from June 9, 1981 to the date of judgment and judgment for the Defendant on his counter-claim in the sum of $900 with interest at the same rate and for the same period. I also ordered the Defendant to pay to the Plaintiff the costs on the claim to be taxed and the Plaintiff to pay to the Defendant costs on his counter-claim at the District Court Scale of Costs.

Order accordingly.

Solicitors: *Murphy & Dunbar; Cooma, Lau & Loh & M. Karthigesu.*